

10.11.10 Draft DOI Tribal Consultation Policy With Near Complete Bismarck Additions  
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**I. PREAMBLE**

The Department of the Interior's Policy on Consultation with ~~Indian~~Native American and Alaska Native Tribes is a ~~re?~~source for advancements and improvements in federal policies. The United States' unique trust relationship calls upon the Department to approach consultation as a trustee, employ systems of accountability, seek opportunities for improvements in the policy, provide the broadest possible application among the Department's Bureaus and Offices, and make an earnest acknowledgment of the federal responsibility to honor its government-to-government relationship with ~~T~~tribes and the federal government. The Department's standards should meet the legal, ethical and moral ~~mandates~~ on DOI that direct services to and interactions with Tribes.

**Comment [JR-Y1]:** What mandates is this referring to?

The sovereignty of ~~Indian~~Native American and Alaska Native ~~T~~tribes is the ultimate source of political power from which all specific political powers are derived. Treaties, the United States Constitution, Federal law and Executive Orders affirm the distinct sovereignty of ~~Indian~~Native American and Alaska Native Tribes. The legal obligation of Federal agencies to consult with Tribes on a government-to-government basis is found in the Constitution. Article I Section 8, also known as the Commerce Clause, empowers Congress to regulate commerce with foreign governments, between the states and with the ~~Indian~~Native American and Alaska Native Tribes. The United States has an obligation to consult with Tribes as sovereign nations on matters of interest and concern to Tribes. The ~~c~~Constitutional mandate is further expressed ~~in~~through statutes, executive orders and the policies of the several Federal Agencies that touch upon Tribal matters.

The fundamental basis of the federal government's consultation with ~~Indian~~Native American and Alaska Native ~~T~~tribes is the United States' recognition of ~~Indian~~Native American and Alaska Native Tribes' sovereignty. The sovereignty of the ~~T~~tribes pre-dates the formal relationship with the federal government. When Tribes and the Federal government enter into consultation processes as described in this policy, the processes recognize both governments to have the highest commitment to principles embodied in this document, and the Secretary of the Department of the Interior support for tribal sovereignty.

This document in its entirety constitutes the Department-wide policy on consultation with ~~Indian~~Native American and Alaska Native Tribes. All Department Bureaus and Offices shall conform to existing practices and institute new practices if necessary in order to comply with the Department's policy as described in this document. All Bureaus and Offices shall issue a report to the Associate Deputy Secretary on the Bureau or Office's efforts at compliance 90 days from the date the Department issues this document.

**II. GUIDING PRINCIPLES**

This policy is intended to be broad. This policy's provisions for improving the Department's consultation processes with ~~Indian~~Native American and Alaska Native ~~T~~tribes applies

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throughout the Department of the Interior to the extent that a conflict of interest does not exist with Federal statutes or applicable authorizing legislation.

This policy requires that Interior's government-to-government consultation involve the appropriate tribal representatives and appropriate Interior officials. Appropriate Interior officials are knowledgeable about the matters at hand and are authorized to speak for Interior. The appropriate Interior official will have decision making authority in the disposition and implementation of a policy. The official will generally be the official with the highest delegated authority. The appropriate Interior official will have an obligation to identify consulting parties early in the planning process and give them a reasonable opportunity to respond and participate as described in this policy. The appropriate Interior official will make the efforts to facilitate and prioritize his or her participation in all discussions related to the consultation process.

Federal consultation that is meaningful, timely, effective and conducted in good faith makes the Department's operation and governance practices more efficient. Efficiencies that are derived from consultation by including IndianNative American and Alaska Native-Tribes at all stages of the tribal consultation process and especially at the start of decision making process, help to ensure that future federal action is achievable, comprehensive, long lasting and reflects genuine tribal input.

Federal consultation that is meaningful, timely, effective, and conducted in good faith includes a two-way exchange of information; a willingness to listen; and an attempt to understand and genuinely consider all parties' opinions, beliefs, needs and desired outcomes. The decision to conduct consultation shall be part of the Department's exchange of information and account for the Department's deliberative process privilege.

Consultation promotes an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information. Consultation is integral to a deliberative process, which results in effective collaboration and informed decision making where all parties share a goal of reaching a decision together.

The United States has established a long-standing and inter-governmental relationship with IndianNative American and Alaska Native-Tribes. Appropriate consultation practices will honor the government-to-government relationship between IndianNative American and Alaska Native-Tribes and the United States that is based on the inherent sovereignty of T-tribes that predatespredating the United States; and will comply with President Barack Obama's Executive Memorandum that-affirmings this relationship and obligates-obligating the Department of the Interior to meet the spirit and intent of Executive Order 13175.

In its execution of this policy, the Department shall promote, protect, and advocate on behalf of IndianNative American and Alaska Native-Tribes' positions across the federal government as part of the ongoing federal relationship with IndianNative American and Alaska Native-Tribes that is described by the Department's duties under the Federal-Tribal trust relationship.

**Comment [ausc2]:** What constitutes applicable authorizing legislation that could have conflicting interest? If the legislation says 'Tribal input not necessary-process confidential' or something of the sort than that would conflict with the obligation to consult.

**Comment [ausc3]:** How is this defined? By Tribe, region, DOI? Is this the def of Tribal officials in III(C)? Also I think it should have a minimum number of Tribal reps requirement in order to ensure Tribal consultation is not considered meeting with only 12 Tribal reps in the nation. "Appropriate" should be identified by the consulting Tribe, and which have authority to speak for the Tribe

**Comment [ausc4]:** Needs to be more clearly defined to include specific minimum time frames in order to prevent future consultation from consisting of 10 hour notices and 3 days to write up Tribal input.

**Comment [ausc5]:** What about something that says Tribes will be notified of consultation through a minimum of direct emails, legible faxes, or calls. Something so there is consistency. Maybe Native news sources. Something to ensure that notice is truly disseminated.

**Comment [ausc6]:** Genuinely reflects Tribal input v. reflects genuine Tribal input is very different. If it has to genuinely reflect Tribal input then there must be significant demonstration of Tribal input in the final product whereas if it reflects genuine Tribal input it simply means that if it reflects Tribal input then that input should be genuine.

**Comment [ausc7]:** What exactly are we trying to say with this sentence?

**Comment [ausc8]:** Out of place. ???

**Comment [ausc9]:** Shouldnt this be government-to-government?

**Comment [JR-Y10]:** That's pretty bold – hope it stays in the final version

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The government-to-government obligation is grounded in Tribal and Federal instruments ~~that described~~describing the Federal to Tribal relationship. These instruments include treaties, the Constitution of the United States; and definitions of the ideals of a nation-to-nation diplomacy as defined through Federal case law, Executive Orders and Presidential commitments.

Comment [ausc11]: ANCSA?

This policy reflects the United States' perpetual obligation to honor the Federal-Tribal relationship and provides an opportunity for the Federal government to redeem its responsibilities on an ongoing basis. The policy will ~~may~~ serve as a standard for future administrations ~~that seek~~seeking to advance a departmental-wide policy that harmonizes the consultation practices of Interior's Bureaus and Offices.

### III. DEFINITIONS

A. Consultation Policies – Consultation policies shall include the steps that each Bureau and Office within the Department of the Interior shall institutionalize in order to comply with the procedures described in section VIII of this policy.

Comment [JR-Y12]: And each bureau/office will have such a policy in place... where is the timeframe for this laid out?

B. ~~IndianNative American and Alaska Native~~ Tribe – Compiling Executive Order 13175 §1(b)—definition of es-“Indian Tribe” and Federal appropriation laws’ expansions of the scope of the Executive Order. ~~IndianNative American and Alaska Native~~ Tribe for the purposes of this policy shall include any ~~IndianNative American~~-Tribe, Band, or Nation ~~or including~~and any Alaska Native village, ~~or~~ regional corporation, or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (84 Stat. 688), which is recognized as eligible for the special programs and services provide by the United States to IndianNative American and Alaska Native because of their status as IndianNative American and Alaska Natives.

Comment [ausc13]: Need to also have a definition of Native Americans and Alaska Natives as a people not just as the governing body that recognizes them.

C. Tribal Officials – ~~Tribal official means an~~ An elected or appointed Tribal leader or official delegate designated in writing by an IndianNative American and Alaska Native Tribe.

D. Collaboration – Collaboration describes Department of the Interior efforts to work with ~~IndianNative American and Alaska Native~~-Tribes by promoting communication and developing a positive government-to-government relationship. Collaboration includes efforts to institutionalize Department officials’ sensitivity and understanding of American-IndianNative American and Alaska Native culture, ~~and~~ governance, and right to self-determination.

Comment [JR-Y14]: And working *with* Tribes to make decisions, formulate policy, etc?

E. Tribal Governance Officer – The Department will designate a Tribal Governance Officer to ensure compliance with this policy and future policies related to ~~the~~ Executive Order 13175. In particular the Tribal Governance Officer will promote consultation as described in section VIII of this policy and promote collaboration as defined in this section. The

Comment [ausc15]: What standard will be used to designate? How can we be assured that they designate someone who is effective—this is important especially since this person is responsible for the dissemination of notices and keeping of records?

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Tribal Governance Officer will: be appropriately located within in the Department so that the position may be accessible to tribal officials; ensure that all Department consultation efforts as described in section VIII are documented and reported to the Department's Point of Contact under the President's Executive Memorandum on consultation; and, in particular, the Tribal Governance Officer will promote and maintain the coordination and receipt of notices for consultation along with Tribal Liaison Officials as described in section VIII.

- F. Tribal Liaison Official – Each Bureau or Office within the Department of the Interior will have at least one person designated as a Tribal Liaison Official. The Tribal Liaison Official will promote collaboration, as described in this section §III(C), between Tribes and the Liaison's Bureau or Office; may reply to an IndianNative American and Alaska Native-Tribe's request for consultation as described in section VIII of this policy; and will strive to foster trusting and ongoing relationships with IndianNative American and Alaska Native-Tribes.
- G. Advocate – Opportunities for Department advocacy on behalf of IndianNative American and Alaska Native-Tribes in legislative and litigation efforts exist when the Department carries out its obligations under the Federal trust responsibility to IndianNative American and Alaska Native-Tribes. The Department should pursue opportunities to advocate for positions expressed by IndianNative American and Alaska Native Tribes. In instances where the Department may serve as an advocate for a position articulated by an IndianNative American and Alaska Native Tribe, the Department's advocacy will enhance the relationship between IndianNative American and Alaska Native Tribes and the Department; help inform the development of federal policy for IndianNative American and Alaska Native Tribes; and may provide an opportunity to institutionalize awareness and knowledge across the Federal government.

**Comment [ausc16]:** If they do not have to reply and are only held to the standard of "may reply" who does the ultimate responsibility of replying fall on?

**Comment [JR-Y17]:** Will ensure a reply from the Tribal Governance Officer/Bureau head/Office head??

**Comment [JR-Y18]:** I think it needs to be emphasized somewhere upfront that consultation is an ongoing, continuous relationship, punctuated by specific interactions on issues of concern (i.e. consultation is not just for when there is a contentious issue, it should be happening all the time).

**Comment [ausc19]:** Will?

**Comment [ausc20]:** Will?

#### IV. TRAINING

Trainings will aim to improve the Department's capacity for promoting collaboration with Tribes and executing the consultation provisions of section VIII in this policy. Training opportunities will promote interaction with Tribes. Trainings will emphasize Department duties concerning Tribal interests and describe the legal, trust and protective obligation of the Federal-Tribal relationship. Trainings will identify tools needed for proper diplomatic outreach by Department officials to IndianNative American and Alaska Native Tribes as sovereigns.

Each Bureau and Office's efforts to comply with this policy should promote mutually respectful positive relations with the establishment of individual Bureau and Office Plans Action to institutionalize training opportunities for staff.

**Comment [ausc21]:** ?? Compliance with this policy must promote mutually respectful and positive relations when each Bureau and Office within the DOI establish their individual action plans to institutionalize training opportunities for staff???? The phrasing is off. It doesn't make sense the way it is written.

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Each Bureau or Office shall seek to implement innovative training opportunities as described in the Section VII of this policy.

V. COMMUNICATION

Each Department Office or Bureau will ensure timely and meaningful communication between ~~the Bureau or Office themselves~~ and IndianNative American and Alaska Native Tribes that promotes regular and early consultation as described in section VIII of this policy. These systems will promote open and transparent communication without compromising the rights of Federally recognized Tribes and the government-to-government consultation process. These methods need not be relegated to one form of communication. All communication should take measures that will avoid impersonal communication; ~~gain the attention of individual T~~ribal leaders; ~~build on best practices;~~ and utilize appropriate forms of technology; and provide for appropriate time allowances.

A Bureau or Office's notification to IndianNative American and Alaska Native ~~T~~ribes about the opportunity for consultation ~~shall constitute a form of communication.~~ The Department's Bureau or Office will notify an IndianNative American and Alaska Native Tribe that an opportunity for consultation exists when the Department's Bureau or Office develops or responds to policies with Tribal implications. Tribal implications include an action that would affect Tribal lands, Tribal resources, or the ability of ~~the a~~ Tribe to govern its people or to provide service. Tribal implications include an action that ~~or~~ would consider regulations, legislation, and other policy statements or actions that have a substantial and/or direct impact on one or more IndianNative American and Alaska Native Tribes. ~~or more and Tribal implications also include actions that would affect one or more at the Tribes's relationship with the Federal Government or the distribution of power and responsibilities between the Federal Government and IndianNative American and Alaska Native Tribes.~~ Tribal implications are further described in Section VIII in this policy.

On-going communication around the issues affecting ~~an~~ IndianNative American and Alaska Native Tribe shall follow notification of the opportunity for consultation and promote regular consultation. On-going communication shall include communication about the design of the consultation process, the execution of that process and the summary of the process' conclusion. When consultation is appropriateundertaken, on-going communication shall include communication until the conclusion of a regulatory process, legislative proposal formation ends and ~~the creation of~~ policy statements, guidance documents, plans of action or management policies are created.

On an annual basis the Secretary or Deputy Secretary will meet with IndianNative American and Alaska Native Tribes to discuss the ongoing consultation practices across the Department of the Interior and inform Tribes of the Department's ~~the future work.~~ ~~of the Department.~~ In order to

**Comment [ausc22]:** We need something here about how this will happen. Obviously notice is communication, but it is getting a notice that you can read within enough time to get the Tribal leaders organized and with enough time to adequately review necessary documents and respond in writing.

**Comment [JR-Y23]:** The opportunity for consultation *always* exists – more like the potential need for consultation on a specific issue, or something [this comment throughout where 'opportunity' is used]

**Comment [JR-Y24]:** Considers developing or responding to

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achieve the goals of the annual summit, the Department may determine that a team of national Tribal leaders serves as a team of representatives to discuss ongoing consultation practices across the Department of the Interior and the future work of the Department including the Department's communication with Indian Native American and Alaska Native Tribes. Annual summit may be further described by Secretarial order.

## VI. ACCOUNTABILITY AND REPORTING

Departmental Office and Bureau measures to ensure accountability and reporting of its consultation practices will help to ensure regular and meaningful consultation. All Bureau and Office heads shall capture in the next scheduled annual performance review, and all future annual performance reviews, a standard that ensures the accounting measures described in this Section are executed by each Bureau or Office in the Department.

Each Department Office ~~of or~~ Bureau head must identify compliance with their Bureau or Office activity in conducting consultation as a distinct performance measure for the Office or Bureau or head with specific attention to timeliness processes provisions described in section VIII.

On a semi-annual basis, the Department's Bureaus and Offices shall report ~~to the Secretary~~ their efforts to promote consultation among Indian Native American and Alaska Native Tribes ~~to the Secretary~~. That reporting shall include, but not be limited to: an accounting of what funding as expended in the disposition of specific consultation efforts, outreach to promote general consultation practices, and training of its staff to improve the capacity of the Bureau or Office to engage with Indian Native American and Alaska Native Tribes in consultation. Accountings will include all documents and correspondence with Indian Native American and Alaska Native Tribes to satisfy the Implementation of Final Federal Action Stage described in Section VIII. Methods of reporting may be both a description of budget expenditures in the execution of consultation efforts, narratives describing significant consultation efforts, and anticipation for future and known consultation opportunities.

The Secretary of DOI will provide a semi-annual report to Tribes and use the Department's website to share the reporting information where appropriate.

For federal block grants that only Indian Native American and Alaska Native Tribes are eligible to receive and in compliance with federal statutes, a Department Bureau or Office shall take special care to disclose measures it has taken to consult with Indian Native American and Alaska Native Tribes in the development of formulas to administer the block grants.

## VII. INNOVATIONS IN CONSULTATION PRACTICES

The Department leadership will strive to advance Federal consultation practices and offer examples for innovation across the Administration. The Department shall actively endeavor to

**Comment [ausc25]:** Consisting of at least one representative from each region. This is integral to making all Tribes feel like they are consulted. Our needs and concepts sometimes vary dramatically depending on our region and if it is not stated that this team will have one rep from each region we could face the problem of all reps being from the same region and completely unaware to the needs and concepts of other Tribes. Alaska should also request that they have 2 reps because almost half the Tribes in the country are here and one voice is not enough for that many Tribes. We are constantly put in the position of battling for attention and a voice that is heard because for every 20 tribes in the lower 48 they seem to have one rep and for 229 Tribes we only have one voice. Our issues end up getting ignored and we have very specific issues that do not necessarily apply in the lower 48.

**Comment [ausc26]:** Word choice?

**Comment [JR-Y27]:** Shall report on how they are ensuring the measures are met, or something?

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identify and address impediments both external and internal to improving its consultation processes.

The Department's Bureaus and Offices shall be open to consultation opportunities initiated by Tribes and seek out the opportunity for consultation with ~~Indian~~Native American and Alaska Native Tribes by communicating regularly with Tribes and ~~Indian~~Native American and Alaska Native Organizations. In cases where the government-to-government relationship does not exist, consultation is encouraged to the extent that a conflict of interest does not exist with Federal statutes or the Department's authorizing legislation and it does not interfere with relationship building.

**Comment [JR-Y28]:** Will follow up on consultation requests initiated by tribes

The Department's leadership may identify opportunities to promote consultation, where appropriate, among Federal legislators and shall consider for endorsement comprehensive proposals that promote consultation practices when the Department interacts with the Office of Management and Budget.

Each Bureau and Office shall acknowledge and comply with existing processes for notifying its staff about the provisions in the Department's consultation policy and identify opportunities to train individual Federal staff as well as ~~Indian~~Native American and Alaska Native Tribes' representatives in a manner that promotes inter-governmental relationships. Bureau and Office leadership shall seek out opportunities for these methods to be shared training opportunities among Federal and tribal representatives and for these methods to highlight tribal leader involvement.

The Department shall avoid the cumbersome effect of litigation on a decision making process when possible by considering ~~Indian~~Native American and Alaska Native Tribes' proposals for conflict resolution measures. Bureau or Office leadership should promote existing mechanism for conflict resolution as a tool to interface with the consultation process.

The Associate Deputy Secretary shall develop a Plan of Action for the continued involvement of a joint ~~Federal-Tribal Team~~. That involvement will consider the Team's role in making recommendations to the Department: on the implementation of this document, on opportunities for inter-agency collaboration on matters related to consultation and compliance with Executive Order 13175, and on opportunities for consultation in the development of a Departmental budget.

**Comment [JR-Y29]:** What is this?

**Comment [JR-Y30]:** For carrying out tribal consultation responsibilities?

### VIII. CONSULTATION GUIDELINES

Consultation measures will establish uniform practices, common standards, and minimum measures that all Bureaus and Offices will use, except when otherwise agreed to in writing by a Bureau or Office and Tribe, through an individual protocol created in conformity with the guidelines in this section. Consultation and individual protocols will provide greater efficiency and transparency in Department practices in order to maximize ~~Indian~~Native American and Alaska Native Tribes' participation.



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A. *Initiating and Recording Consultation Measures* – A Departmental Office or Bureau must initiate consultation when any one of the following takes place: (1) when considering a draft Department regulation or rulemaking that has Tribal implications and that, if adopted, could possibly preempts Tribal law ~~a policy or guidance document that preempts tribal law~~; (2) impacts IndianNative American and/or Alaska Native’s lands and resources ~~Country~~; (3) a legislative proposal made by the Department that impacts Tribal affairs ; or (4) a draft funding formula change for a program whose primary recipients are IndianNative American and/or Alaska Native Tribes. The Office or Bureau must notify the Department’s Tribal Governance Officer in writing when it initiates formal consultation.

~~A~~ IndianNative American and Alaska Native Tribe may request the Department to provide formal consultation when it believes that any of the above listed events occurs or will occur. The request should be made in written form ~~writing~~ to the Department’s Tribal Governance Officer and describe the specific federal action. However, the fact that ~~a~~ IndianNative American or Alaska Native Tribe may choose not to engage the Tribal Governance Officer does not relieve federal offices or bureaus of their obligations to engage in formal consultation. In the event that the Department does not receive a response to their initial invitation to consult, the Department should make reasonable, periodic efforts throughout the process to repeat the invitation.

B. *Role of Tribal Governance Officer in Consultation Processes* — When a Bureau or Office provides notification of the opportunity for consultation to occur, the Department’s Tribal Governance Officer will document the notice of consultation. The Tribal Governance Officer may serve as the Department representative in requests by ~~a~~ IndianNative American and Alaska Native Tribe for consultation to occur. The Tribal Governance Officer will always encourage IndianNative American and Alaska Native Tribes to request consultation directly ~~from~~ the appropriate Bureau or Office representative and help to ensure the Bureau or Office resolves all requests. ~~Especially~~ In those consultation efforts that are of National significance or involve multiple Bureaus of Offices, ~~eth~~ the Tribal Governance Officer will especially help to ensure a government-to-government relationship is honored by all parties.

C. *Guidelines for Response to Request for Consultation* – Within 5 business days of receiving ~~a~~ IndianNative American and Alaska Native Tribe’s requests for consultation, the Tribal Governance Officer, or appropriate Bureau or Office representative, will confirm receipt of the request. Within 14 days of the date of the confirmation receipt of the request the Tribal Governance Officer, or appropriate Bureau of Office representative will and then within 14 days: determine if a Bureau or Office may provide notification of

**Comment [JR-Y31]:** And in different formats (i.e. not just letter, but also follow up with phone calls or email or other methods). It should also be a responsibility of the TGO to keep up-to-date contact information for each tribe –because contact info can change frequently

**Comment [JR-Y32]:** Yes, these determinations need to be made by someone with actual authority, but what will be the process of determining if a consultation request is ‘valid’?



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an opportunity for consultation. The Tribal Governance Officer or appropriate Bureau or Office representative will respond to the tribal requestor in writing taking into account an appropriate process for communication that will not delay resolution of the request and will account for geographic circumstances.

D. *Stages of Consultation*– Bureaus and Offices will carry out the three stages described below in order to satisfy consultation.

1. Design Stage

Each Bureau or Office will initiate consultation at this Stage when considering actions that may have ~~T~~tribal implications. Tribal implications include an action that: (1) would affect tribal lands, tribal resources, or the ability of the tribe to govern its people or to provide service; or (2) would consider regulations, legislation, and other policy statements or actions that have substantial and direct impact on one or more Indian Native American and/or Alaska Native Tribe; (3) would impact one or more or more and the Tribes' relationship with the Federal Government or the distribution of power and responsibilities between the Federal Government and Indian Native American and Alaska Native Tribes.

Design Stage activities must occur:

- Before the Bureau or Office begins drafting proposed regulations.
- Before the Bureau or Office publishes proposed regulations in the Federal Register.
- Before proposed legislation is introduced at the request of the Bureau or Office.
- Before the Bureau or Office formulates or implements procedures that impact specific projects with substantial and direct impact on a ~~T~~tribe(s) or tribes.
- Before the Bureau or Office begins to address existing policies that impact ~~T~~tribes.
- Before drafting funding formula changes for a program whose primary recipients are ~~Indian Native American and Alaska Native~~ Tribes.
- When designing research that has the potential to impact 1/2/3 above

During the Design Stage, a Bureau or Office will provide information and communicate with ~~Indian Native American and Alaska Native~~ Tribes in order to enable ~~T~~tribes to make a valuable, thorough, and meaningful contribution.

A Bureau or Office will design a process for each ~~F~~federal action that will be carried out by meetings, telephone conversations, written comments, or a combination of all three; and may enlist workgroups of ~~T~~tribal leadership and representatives that are particularly useful for identifying and addressing issues.

**Comment [JR-Y33]:** This is important! Refer to our ongoing NOAA/NMFS research issues!

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A Bureau or Office will identify the participants in the consultation process including those decision makers and the affected Tribes. To the extent feasible, Bureau or Office personnel who are expected to have a significant, high level role in the Bureau or Office decision and Tribal representatives will personally participate in the consultation process.

**Comment [JR-Y34]:** How will they do this? And make sure that Tribes who want to can participate?

A Bureau or Office will seek and promote cooperation and participation with other agencies that have jurisdiction over, special expertise with respect to, or related responsibilities regarding the Bureau or Office's proposed legislation, action or policy.

A Bureau or Office will provide appropriate notification of each stage in the process to IndianNative American and Alaska Native Tribes. Written notice shall be provided where feasible. Where written notice to a tribe is appropriate, the Bureau shall provide notification under this section by mail and/or by facsimile, to the Chair (or other Chief Executive Officer) of the tribe, unless the tribe specifies a different means of notice or unless a different means of notice is required by law. The provisions of this subsection shall apply both to initial notices of the beginning of a consultation process, and to any subsequent notices regarding such a process.

A Bureau or Office will conduct a scoping meeting with tribal governments that complies with the guiding principles in this document. The scoping meeting will initiate a thorough identification and review of the issues prior to preparation of a decision, and will not debate the ultimate decisions. The scoping meeting should also identify areas that need further research and gather input from tribal leaders about how the consultation process should proceed.

**Comment [JR-Y35]:** What exactly does this mean? Tribes can't talk about the possible outcomes and how they would be impacted by each?

#### 2. Proposal Development Stage

A Bureau or Office will evaluate comments it receives from tribal leadership through during the Design Stage from tribal leadership and may develop a post-Design Stage document in order to share with tribal leaders the preliminary decisions that have been made on what issues to cover.

**Comment [JR-Y36]:** And how such research should be carried out, and by who. Tribes may want their own tribal members to do the research, or may have specific individuals or groups in mind that have experience with particular issues or research methods, already sensitive to cultural factors involved in research, etc.

Following the design stage process, and the selection of issues to be covered, the Bureau or Office should allocate available resources to carry out a proposal development. Tribal governments and their organizations should be considered as appropriate collaborative partners, particularly where negotiated rule-making or a Tribal Leader Task Force is created.

The Bureau or Office will select a process for the Proposal Development Stage that will maximize the opportunity for timely input by Tribal officials. Consultation under this Stage shall occur in a manner that is consistent with the overriding goal of assuring maximum, fully informed, and in-depth Tribal participation and informed federal decision making. The Bureau or Office will structure a process at this Stage to the extent feasible to conform to the expressed views of the Tribes and may proceed with the expectation that interested IndianNative American and Alaska Native Tribes will respond within a reasonable time period.

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Examples of appropriate process for the Proposal Development Stage of work may include any or the following:

- Negotiated Rule Making. The Bureau or Office should consider using negotiated rule making for developing significant regulations or other formal policies relating to tribal self-government, trust resources, or treaty and other rights, unless such a process would be inappropriate.
- Tribal Leader Task Force. The Bureau or Office may use a Tribal Leader Task Force on matters that impact Tribes across the country where negotiated rule making is unavailable or is not desired by the ~~Indian~~Native American and Alaska Native Tribes. A Tribal Leader Task Force may also be used, in appropriate circumstances, on regional or issue-specific (e.g., timber) matters. In each instance, the composition of the Task Force shall be determined by the Tribes, provided that the Task Force shall be a process open to all Tribes and shall to the extent possible represent a cross-section of tribal interests with respect to the matter at issue. The number of meetings to be held, and their location, shall conform to the expressed views of the Tribes, to the extent practicable and permitted by law.
- Series of Open Meetings. The Bureau or Office may provide open invitations to tribal leaders as part of a series of open meetings to consider action under consideration. Open meetings can be used for national, regional or subject-matter specific issues.
- Single Meetings. The Bureau or Office may host tribal leaders in a single meeting to discuss a federal action under consideration. Single meetings are particularly appropriate for local, regional or single tribe issues.

The Bureau or Office will, at the outset of the Proposal Development Stage, solicit the views of affected Tribes regarding how long the process to consider a federal action will take. The Bureau or Office should make all reasonable efforts to comply with the expressed views of the affected Tribes regarding the length of the process at this Stage, taking into account the level of impact, and the scope and the complexity of the issues involved in the proposed federal action. Notwithstanding the overall time for the process at this stage, tribal leaders should continue to be informed about the Bureau or Office's decision making process, except where expressly prohibited by law. If the Bureau or Office determines that the Administrative Procedure Act or other federal law expressly prohibits continued discussion at a specified point in the decision making process, the Bureau or Office should so inform the Tribes at the outset of this stage in the process. The Bureau or Office may proceed with the expectation that interested ~~Indian~~Native American and Alaska Native Tribes will respond within a reasonable time period during this Stage.

#### 3. Implementation of Final Federal Action Stage

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Prior to finalizing a decision on a federal action, the Bureau or Office will develop a written document for public dissemination to explain and address issues raised as priority matters during the Proposal Development Stage. Bureau decisions significantly impacting Indian Native American and Alaska Native Tribes shall be communicated in writing and made in conformance with guiding principles herein, and notice shall be provided to all identified parties. All written Bureau or Office decisions will refer to the results of the Design Stage and Proposal Development Stage and include the reasons for the final action.

The Bureau or Office at this Stage will consider the need for training or technical assistance on a new regulation or policy.

- E. *Impact of Consultation* – Consultation as described in this section may not be a basis for the Department to preclude requests or recommendations by Offices, Bureaus or Indian Native American and Alaska Native Tribes to collaborate and foster trusting relationships between the Department and Indian Native American and Alaska Native Tribes outside of the processes described in this section.

**Comment [JR-Y37]:** This whole last section is kind of wishy washy – could be more detail regarding what the actual process will look like.

**Comment [JR-Y38]:** There is nothing in this doc re financial obligations of DOI regarding this policy - how much of each Bureau/Office's budget should be set aside for complying with this policy? It will involve travel on the part of the Department and Tribes – who will pay for this, how much, etc.? This is a major concern to Tribes – especially rural ones for which travel is extremely expensive and time consuming.